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POLICY

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## Guatemala

**Post:** Guatemala

### Guatemala removes trade barrier but next steps unclear

**Report Categories:**

Trade Policy Monitoring

Agricultural Situation

Country Strategy Statement

Sanitary/Phytosanitary/Food Safety

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**Report Highlights:**

On September 19, 2016, Ministerial Decree 160-16 was published effectively rescinding the decree that required site inspections by the Ministry of Agriculture (MAGA) of all U.S. and third-country facilities that exported select non-processed meat and meat products to Guatemala. The previous decree, 382-2014, most significantly impacted seafood imports causing disruptions in Guatemala's seafood processing and re-export sectors. U.S. poultry, pork and beef products were exempted under CAFTA-DR equivalency provisions. According to the new decree, 160-16, MAGA food safety inspections will default to Codex Alimentarius standards and guidelines to ensure the safety of consumers.

## **General Information:**

### **Guatemala Struggles with Domestic Production Interests to Set Policy**

The rescinding of Decree 382 was well received by Guatemalan seafood processors as well as U.S. and third-country exporters. However, an internal struggle continues within MAGA, making it unclear if the new policy will actually eliminate site inspections and facilitate trade, or simply create new procedures and obstacles for Guatemalan importers. FAS/Guatemala met with MAGA authorities following the lifting of the decree to clarify MAGA's procedures and requirements for future imports under the new policy. Unfortunately, the Food Safety Inspection Office will not comply with the new mandate until the Office of the Vice Minister provides additional information and instructions.

While the Guatemalan seafood industry was pressing MAGA to rescind Decree 382, other sectors were arguing against it. According to MAGA contacts, Guatemalan poultry, beef and pork producer groups are concerned that rescinding Decree 382 will leave the country unprotected from third-country imports that may not fully meet Guatemala's food safety standards. Decree 382 was originally created to protect Guatemalan agriculture from imports from countries within the region and not necessarily from the United States. Unfortunately, MAGA's food safety regulatory authority used Decree 382 to justify an import protocol incorporating the most extreme measure, site inspections, to meet Guatemala's food safety regulatory responsibilities.

To address producers concerns, MAGA proposes to create a new food safety regulation that will be opened for a 60-day comment period. This will create port delays for at least the next two months and possibly much longer. Additionally, the Food Safety Inspection Office stated in a meeting with FAS/Guatemala that current import protocols will continue until new instructions are received. In the meantime, several export companies including U.S. companies, will see their authorizations to export expire at the end of October 2016, creating further problems. Most recently, after conducting onsite inspections of export facilities in Ecuador, Guatemala rejected or rescinded approvals for eight Ecuadoran seafood processing and export facilities to export raw materials to Guatemala. Guatemalan importers that process the Ecuadoran shrimp for re-export, were forced to lay off 1,800 workers because of MAGA's actions.

## **From Where We Came**

Guatemala based Decree 382-2014 on a Central American wide regulation published in 2011, COMIECO 271-2011 Article 13. Guatemala is not the only Central American country that is using this regulation to require site-by-site inspection of seafood facilities. The United States has also noted problems in Nicaragua and El Salvador. The sites include: processing plants, warehouses, or distribution centers in the country of origin. The United States exported \$5,889,000 in fish products (processed and not processed) to Guatemala in 2015 and \$20,470,000 in fish products to all of Central America in 2015.

MAGA issued ministerial decree 382-2014 in July of 2014. MAGA did not notify the decree to the WTO SPS Committee and it went into effect upon official publication. The decree required all

companies that export non-processed food of animal or plant origin to ask their own government to request MAGA to conduct an inspection of the exporter's facility. The exporter was required to pay all of the costs associated with this inspection.

FAS/Guatemala has officially submitted to MAGA high-level authorities concerns in regards to 382-2014, which are: a) lack of transparency, b) national treatment, c) non science-based regulations and procedures, d) non-compliance with SPS/WTO and SPS/CAFTA-DR. According to MAGA, only five U.S. exporting facilities are eligible to export seafood and products to Guatemala. In addition, MAGA does not wish to recognize NOAA authority on fisheries, alleging it is FDA the food safety certifier in the United States. Prior to mandatory inspection as a pre-requisite to export to Guatemala, several companies were exporting seafood and other products, such as lamb.

Recently, the Guatemalan local press became interested in MAGA's food safety inspection practices and published two articles about its apparent abuse of authority on the subject. It is too soon to know if public disclosure of the situation will make a difference, but perhaps it will encourage MAGA to take some action before the situation becomes too political. Unfortunately, to date all efforts to do so have failed.